

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



0000159223

C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

DATE: JULY 9, 2001

DOCKET NO: T-03973A-00-1038

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight Nodes. The recommendation has been filed in the form of an Opinion and Order on:

VIVO COMMUNICATIONS-AZ, LLC
(CC&N/FACILITIES-BASED)


Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 18, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 24, 2001 AND JULY 25, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
7 VIVO COMMUNICATIONS-AZ, LLC FOR A
8 CERTIFICATE OF CONVENIENCE AND
9 NECESSITY TO PROVIDE COMPETITIVE
FACILITIES-BASED AND RESOLD LOCAL
EXCHANGE, INTEREXCHANGE, AND ACCESS
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03973A-00-1038

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: June 21, 2001

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

13 APPEARANCES: Michael W. Patten, ROSHKA HEYMAN & DEWULF,
14 on behalf of VIVO Communications-AZ, LLC;

15 Teena Wolfe, Staff Attorney, Legal Division, on behalf
16 of the Utilities Division of the Arizona Corporation
Commission.

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On December 19, 2000, VIVO Communications-AZ, LLC ("VIVO" or "Applicant")
22 filed with the Commission an application for a Certificate of Convenience and Necessity
23 ("Certificate") to provide competitive facilities-based and resold local exchange, interexchange, and
24 access telecommunications services in Arizona.

25 2. VIVO is an Arizona limited liability company, authorized to do business in Arizona.

26 3. On January 22, 2001, VIVO filed Affidavits of Publication indicating compliance with
27 the Commission's notice requirements.

28 4. On March 13, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff

1 Report, which recommended approval of the application and included a number of additional
2 recommendations.

3 5. On April 4, 2001, a Procedural Order was issued setting the matter for hearing on June
4 21, 2001.

5 6. A hearing was held on June 21, 2001, at which Applicant and Staff presented
6 evidence. At the hearing, Staff made several minor changes to the Staff Report recommendations.

7 7. Qwest and VIVO have not yet executed an interconnection agreement, but such
8 negotiations are expected to begin in the near future.

9 8. The management of VIVO has many years of experience in the telecommunications
10 industry.

11 9. Applicant has the technical capability to provide the services that are proposed in its
12 application.

13 10. Currently there are several incumbent providers of local exchange, toll, and exchange
14 access services in the service territory requested by Applicant, and numerous other entities have been
15 authorized to provide competitive local exchange services in all or portions of that territory.

16 11. It is appropriate to classify all of Applicant's authorized services as competitive.

17 12. The Staff Report stated that Applicant has no market power and the reasonableness of
18 its rates would be evaluated in a market with numerous competitors.

19 13. According to Staff, VIVO submitted the unaudited balance sheet of its sister company,
20 VIVO-TN, LLC, as of November 30, 2000. These financial data list assets of \$106,293 and total
21 shareholders' equity of \$106,293. Based on this information, Staff believes that VIVO lacks
22 sufficient financial strength to offer the requested telecommunications services in Arizona absent the
23 procurement of a performance bond.

24 14. Staff recommends, as amended, that VIVO's application for a Certificate to provide
25 competitive facilities-based and resold telecommunications services be granted subject to the
26 following conditions:

27 (a) unless its provides services solely through the use of its own facilities, VIVO
28 should be ordered to procure an Interconnection Agreement before being
allowed to offer local exchange service;

- 1 (b) VIVO should be ordered to file with the Commission, within 30 days of an
2 Order in this matter, its plan to have its customers' telephone numbers included
3 in the incumbent's Directories and Directory Assistance databases;
- 4 (c) VIVO be ordered to pursue permanent number portability arrangements with
5 other LECs pursuant to Commission rules, federal laws and federal rules;
- 6 (d) VIVO be ordered to abide by and participate in the AUSF mechanism
7 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
8 03905A-00-0513E-95-0498);
- 9 (e) Applicant be ordered to abide by the quality of service standards that were
10 approved by the Commission for USWC in Docket No. T-0151B-93-0183;
- 11 (f) in areas where Applicant is the sole provider of local exchange service
12 facilities, VIVO be ordered to provide customers with access to alternative
13 providers of service pursuant to the provisions of Commission rules, federal
14 laws and federal rules;
- 15 (g) VIVO be ordered to certify, through the 911 service provider in the area in
16 which it intends to provide service, that all issues associated with the provision
17 of 911 service have been resolved with the emergency service providers within
18 30 days of an Order in this matter;
- 19 (h) VIVO be ordered to abide by all the Commission decisions and policies
20 regarding CLASS services;
- 21 (i) VIVO be ordered to provide 2-PIC equal access;
- 22 (j) VIVO be required to certify that all notification requirements have been
23 completed prior to a final determination in this proceeding;
- 24 (k) VIVO be required to notify the Commission immediately upon changes to its
25 address or telephone number;
- 26 (l) VIVO be ordered to comply with all Commission rules, orders, and other
27 requirements relevant to the provision of intrastate telecommunications
28 service;
- (m) VIVO be ordered to maintain its accounts and records as required by the
Commission;
- (n) VIVO should be ordered file with the Commission all financial and other
reports that the Commission may require, and in a form and at such times as
the Commission may designate;
- (o) VIVO maintain on file with the Commission all current tariffs and rates, and
any service standards that the Commission may require;
- (p) VIVO should be ordered to cooperate with Commission investigations of
customer complaints;
- (q) VIVO be ordered to participate in and contribute to a universal service fund, as
required by the Commission; and

(r) In order to protect VIVO's customers:

- (1) VIVO should be ordered to procure a performance bond equal to \$100,000. The minimum bond amount of \$100,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from VIVO's customers;
- (2) that if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
- (3) that the Applicant should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
- (4) that proof of the performance bond should be docketed within 90 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect; however,
- (5) if, at some time in the future, the Applicant's financial outlook improves, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be accompanied by information demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission.

15. Staff further recommended that VIVO's tariffs be approved on an interim basis subject to the following:

- (a) That VIVO file tariffs in accordance with this Decision within 30 days of an Order in this matter or within 30 days of an Order approving its interconnection agreement, whichever is later;
- (b) That VIVO should be required to file in this Docket, within 18 months of the date it first provides service following certification, sufficient information for Staff analysis and recommendation for a fair value finding, as well as for an analysis and recommendation for permanent tariff approval. This information must include, at a minimum, the following:
 1. A dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by VIVO following certification, adjusted to reflect the maximum rates that VIVO has requested in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all services offered times the maximum charge per unit.
 2. The total actual operating expenses for the first twelve months of telecommunications service provided to Arizona customers by VIVO

1 following certification.

- 2 3. The value of all assets, listed by major category, used for the first twelve
3 months of telecommunications services provided to Arizona customers by
4 VIVO following certification. Assets are not limited to plant and
equipment. Items such as office equipment and office supplies should be
included in this list.

- 5 (c) VIVO's failure to meet the condition to timely file sufficient information for a
6 fair value finding and analysis and recommendation of permanent tariffs
7 should result in the expiration of the Certificate of Convenience and Necessity
and of the tariffs.

8
9 16. At the hearing, VIVO agreed to comply with all of Staff's recommendations, but
10 requested waivers of two of the timelines. VIVO requests that its conforming tariffs not be required
11 until 30 days after an interconnection agreement is executed, instead of within 30 days from the date
12 of this Order. The Applicant also requests that proof of the performance bond not be required until
13 the earlier of 180 days from the issuance of this Order or 30 days prior to commencement of service.
14 Staff does not oppose either of these requests. The Applicant indicated that it intends to begin
operations in Arizona within six months.

15
16 17. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion
17 in U S West Communications, Inc. vs. Arizona Corporation Commission, 1 CA-CV 98-0672, holding
18 that "the Arizona Constitution requires the Commission to determine fair value rate bases for all
19 public service corporations in Arizona prior to setting their rates and charges."

20 18. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
21 Supreme Court. On February 13, 2001, the Commission's Petition was granted. However, at this
22 time we are going to request FVRB information to insure compliance with the Constitution should
23 the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. We also
24 are concerned that the cost and complexity of FVRB determinations must not offend the
25 Telecommunications Act of 1996.

26 CONCLUSIONS OF LAW

27 1. Applicant is a public service corporation within the meaning of Article XV of the
28 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

1 2. The Commission has jurisdiction over Applicant and the subject matter of the
2 application.

3 3. Notice of the application was given in accordance with the law.

4 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
5 Certificate to provide competitive telecommunications services.

6 5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised
7 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
8 in its application.

9 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide
10 competitive facilities-based and resold local exchange, interexchange, and exchange access
11 telecommunications services in Arizona as conditioned by Staff's recommendations as modified
12 below.

13 7. The telecommunications services that the Applicant intends to provide are competitive
14 within Arizona.

15 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
16 it is just and reasonable and in the public interest for Applicant to establish rates and charges which
17 are not less than the Applicant's total service long-run incremental costs of providing the competitive
18 services approved herein.

19 9. Staff's recommendations in Findings of Fact Nos. 14 and 15, as modified in
20 accordance with Finding of Fact No. 16, are reasonable and should be adopted.

21 **ORDER**

22 IT IS THEREFORE ORDERED that the application of VIVO Communications-AZ, LLC for
23 a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and
24 resold local exchange, and exchange access telecommunications services in Arizona shall be, and is
25 hereby, granted, as conditioned herein.

26 IT IS FURTHER ORDERED that the conforming tariffs of VIVO Communications-AZ, LLC
27 shall be filed within 30 days after an interconnection agreement is executed.
28

1 IT IS FURTHER ORDERED that VIVO Communications-AZ, LLC shall procure a
2 performance bond equal to \$100,000 the earlier of 180 days from the effective date of this Order or
3 30 days prior to the commencement of service. The minimum bond amount of \$100,000 shall be
4 increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the
5 Applicant's customers.

6 IT IS FURTHER ORDERED that VIVO Communications-AZ, LLC shall comply with all of
7 the Staff recommendations set forth in Findings of Fact Nos. 14 and 15, as modified by Finding of
8 Fact No. 16.

9 IT IS FURTHER ORDERED that VIVO Communications-AZ, LLC shall file with the
10 Compliance Section of the Utilities Division a letter indicating the date on which it will begin
11 providing service at least 60 days prior to providing service.

12 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14
15 CHAIRMAN

COMMISSIONER

COMMISSIONER

16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Secretary of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this ____ day of _____, 2001.

22
23 BRIAN C. McNEIL
24 EXECUTIVE SECRETARY

25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

DISSENT _____
DDN:mlj

1 SERVICE LIST FOR: VIVO COMMUNICATIONS-AZ, LLC

2 DOCKET NO.: T-03973A-00-1038

3

4 Michael W. Patten
5 ROSHKA HEYMAN & DEWULF
6 400 N. 5th Street, Suite 1000
7 Phoenix, AZ 85004
8 Attorneys for VIVO Communications-AZ, LLC

9 Timothy Berg
10 FENNEMORE CRAIG
11 3003 North Central Avenue, Suite 2600
12 Phoenix, Arizona 85012
13 Attorneys for Qwest Corporation

14 Christopher Kempley, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Deborah Scott, Director
20 Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24

25

26

27

28

29

30

31

32

33

34

35